

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

_____)	
In the Matter of)	
)	Inv. No. 337-TA-374
CERTAIN ELECTRICAL)	
CONNECTORS AND PRODUCTS)	
CONTAINING SAME)	
_____)	

ORDER

The Commission has previously determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation and sale of certain electrical connectors that infringe U.S. Letters Patent 5,383,792.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that a limited exclusion from entry for consumption of articles, including certain downstream products, is necessary to provide effective relief in this investigation. Accordingly, the Commission has determined to issue limited exclusion order prohibiting the unlicensed importation of infringing electrical connectors and motherboard containing such connectors manufactured and/or imported by Hon Hai Precision, Ltd. or Foxconn International, Inc. In addition, the Commission has issued a cease and desist order to domestic respondent Foxconn International, Inc. requiring it to cease and desist from the following activities in the United States: importing, selling, marketing, distributing, offering for sale, or otherwise transferring (except for exportation) in the United States infringing imported electrical connectors and motherboard containing such connectors.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. §§ 1337(d) and (f) do not preclude the issuance of the limited exclusion order and the cease and desist order, and that the bond during the Presidential review period shall be in the amount of twenty (20) percent of the entered value of the imported electrical connectors and \$0.20 per imported electrical connector on motherboards; containing such connectors.

Accordingly, the Commission hereby ORDERS that:

1. Electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792, that are manufactured and/or imported by or on behalf of Hon Hai Precision Industry Co., Foxconn International, Inc., or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, and motherboards containing such electrical connectors, are excluded from entry for consumption into the United States for the remaining term of the patent, except under license of the patent owner or as provided by law.
2. The electrical connectors excluded by paragraph 1 above that are not assembled onto motherboards are entitled to entry into the United States under bond in the amount of twenty (20) percent of the entered value of such items pursuant to subsection (j) of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(j)) from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action.
3. The motherboards containing electrical connectors excluded by paragraph 1 above are entitled to entry into the United States under bond in the amount of \$0.20 per imported electrical connector assembled thereon from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action. Persons importing such motherboards during this time period shall certify to the best of their knowledge the number of electrical connectors subject to this Order assembled on such motherboards, pursuant to procedures to be specified by the U.S. Customs Service, as the Customs Service deems necessary, prior to entry or at entry.
4. Pursuant to procedures to be specified by the U.S. Customs Service as the Customs Service deems necessary, persons seeking to import electrical connectors or

motherboards subject to this Order shall certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the electrical connectors, or motherboards containing same, being imported are not excluded from entry under paragraph I of this Order. At its discretion, the Customs Service may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

5. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to electrical connectors or motherboards containing same imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
6. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.
7. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.
8. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.

Donna R. Koehnke
Secretary

Issued: May 3, 1996

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

_____)	
In the Matter of)	
)	Inv. No. 337-TA-374
CERTAIN ELECTRICAL)	
CONNECTORS AND PRODUCTS)	
CONTAINING SAME)	
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ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Foxconn International, Inc., 930 W. Maude Avenue, Sunnyvale, California 94086, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), or soliciting U.S. agents or distributors for electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792, and motherboards containing such connectors, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

(Definitions)

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) "Complainants" shall mean AMP Incorporated, 470 Friendship Road, Harrisburg, Pennsylvania 17105 and The Whitaker Corporation, 4550 New Linden Hill Road, Suite 450, Wilmington, Delaware 19808.

(C) "Foxconn" and "Respondent" shall mean Foxconn International, Inc., 930 W. Maude Avenue, Sunnyvale, California 94086

(D) "Person" shall mean an individual, or any nongovernmental partnership, firm, association, corporation, or other legal or business entity other than Foxconn or its majority owned and/or controlled subsidiaries, their successors, or assigns.

(E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) "Covered product" shall mean electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792, and motherboards containing such connectors.

(G) "Motherboard" shall mean any motherboard entered into the United States under current HTSUS numbers 8536.69 and 8529.90.

(H) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

II.

(Applicability)

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned -business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

III.

(Conduct Prohibited)

The following conduct of Foxconn in the United States is prohibited by the Order. Foxconn shall not:

(A) import or sell for importation into the United States electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792 and motherboards containing such connectors for the remaining term of the patent;

(B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation) in the United States imported electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792 and motherboards containing such connectors for the remaining term of the patent;

(C) advertise imported electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792 and motherboards containing such connectors for the remaining term of the patent; or

(D) solicit U.S. agents or distributors for imported 'electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792 and motherboards containing such connectors for the remaining term of the patent.

IV.

(Conduct Permitted)

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Letters Patent 5,383,792 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of electrical connectors by or for the United States.

V.

(Reporting)

For purposes of this reporting requirement, the reporting periods shall commence on January 1 and July 1 of each year, and shall end on the subsequent June 30 and December 31, respectively.

However, the first report required under this section shall cover the period May 3, 1996 through June 30, 1996. This reporting requirement shall continue in force until the expiration of U.S. Letters Patent 5,383,792, unless, pursuant to subsection 0)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order that he disapproves this Order; provided, however, that Respondent's reporting requirement hereunder shall cease if, in a timely filed report, Respondent shall report no sales of imported covered product during two (2) successive reporting periods and no remaining inventory of imported covered product.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of foreign-made covered product that Respondent has imported or sold in the United States during the reporting period and the quantity in units and value of reported covered product that remains in inventory at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order.

VI.

(Recordkeeping and Inspection)

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of electrical connectors made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution, or sale of electrical connectors in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in

subparagraph VII(A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Letters Patent 5,383,792. VM.

VIII.

(Confidentiality)

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

(Enforcement)

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

(Modification)

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

(Bonding)

The conduct prohibited by Section III of this Order may be continued during the period in which this Order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), subject to Respondent posting a bond in the amount of twenty (20) percent of the entered value of the imported electrical connectors covered by claims 17, 18, 20, 21, or 23 of U.S. Letters Patent 5,383,792, and \$0.20 per electrical connector on motherboards containing such connectors. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products on or after May 3, 1996, are subject to the entry bond as set forth in the limited exclusion order issued by the Commission on May 3, 1996, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. Commission Rule 210.611, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the President approves.. or does not disapprove within the Presidential review period, the Commission's Orders of May 3, 1996, or any subsequent final order issued after the completion of Investigation No. 337-TA-374, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless the products subject to this bond are exported or destroyed by Respondent, and Respondent provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an Order issued by the Commission based upon application therefor made by Respondent to the Commission.

By Order of the Commission.

Donna R. Koehnke
Secretary

Issued: May 3, 1996